



MARYLAND DEPARTMENT OF NATURAL RESOURCES

Proposed Regulations to Implement MD's Oyster Restoration and Aquaculture Development Plan



**Public Hearing on Proposed Regulations
to Implement MD's Oyster Restoration
and Aquaculture Development Plan
July 7, 13, 22 and August 5, 2010**



MARYLAND DEPARTMENT OF NATURAL RESOURCES

Proposed Regulations to Implement MD's Oyster Restoration and Aquaculture Development Plan

AGENDA

- **Welcome; Purpose of Public Hearing**
- **Presentation of Proposed Regulations**
- **Answer Questions 'Specific' to Proposed Regulations**
- **Obtain Public Comment on Proposed Regulations**



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Assessment of Past Oyster Management Approach and Results to Date

Funding

- >\$40 million federal & state investment since 1994

Past Management Approach

- >75% of funds used for industry
- Restricted sanctuaries to unproductive areas
- Prohibited aquaculture in many areas

Population

- Unchanged. 1% of historic levels since 1994.

Habitat

- Declined 80% over the past 25 years

Harvest

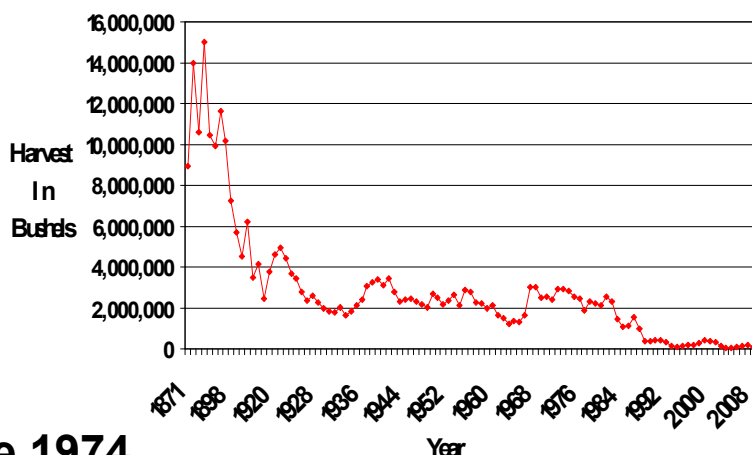
- Declined 90% over the past 25 years

Harvesters

- Declined 75% over the past 25 years

Processors

- Declined 70% since 1974



Status Quo is Not Acceptable



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Plan Development Timeline

Jan 2003 - Environmental Impact Statement Initiated

Sept 2007 - Oyster Advisory Commission Formed

Sept 2008 - Aquaculture Coordinating Council submits Shellfish Aquaculture Report to Governor O'Malley

Feb 2009 - Oyster Advisory Commission Issues Findings and Recommendations in Legislative Report

May 2009 - Governor O'Malley signs Aquaculture Lease Law that the General Assembly approved unanimously

June 2009 - Environmental Impact Statement Completed. MD, VA, Corps, NOAA, FWS, EPA all agree on native oyster strategy – expand sanctuaries, expand aquaculture, and implement science based management of wild fishery

Dec 2009 - Governor O'Malley Announces Proposed Oyster Restoration and Aquaculture Development Plan

Dec 2009 – May 2010 – DNR Conducts Extensive Public Participation Process including four open houses, and more than 100 consultation stakeholder meetings. Several oyster policy bills debated in 2010 legislature.

May 27, 2010 - Proposed regulations submitted to AELR.



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Overview of Regulatory Proposals

- **7 DNR and 1 MDE Regulatory Packages**
- **Address 4 Management Areas**
 - ✓ Expanded Oyster Sanctuary Network
 - ✓ Public Shellfish Fishery Areas
 - ✓ Leasing and Aquaculture
 - ✓ Power Dredge Study Areas



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MD's Proposed Oyster Restoration and Aquaculture Development Plan

Expanded Oyster Sanctuary Network

Objectives:

- Facilitate natural disease resistance
- Provide important ecological functions
- Increase amount of sanctuaries from 9% to 25% of remaining oyster bar habitat
- Focus on currently productive areas
- Obtain broad geographic distribution



Expanded Oyster Sanctuary Network

Regulatory Proposal:

- Prohibit the wild harvest of oysters in all sanctuaries, and clams in specified sanctuaries.
- Modifications were made in each affected county to mitigate industry concerns
- Added additional sanctuaries to support Marylanders Grow Oyster Program
- Still achieved stated objectives



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Expanded Oyster Sanctuary Network

- **Regulatory Proposal (cont'd):**

- Clarified access issues

- ✓ Recreational fishing is allowed

- ✓ Commercial fishing, other than wild oyster harvest, is allowed

- ✓ Commercial clamming

- Maintains prohibition in existing sanctuaries

- Modifies OMP to allow clamming to continue in traditional and currently legal areas within newly proposed sanctuaries with a 150' buffer from any natural oyster bar and leased area

- Under existing regulatory authority, DNR will require commercial clammers to begin submitting monthly harvest reports



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Expanded Oyster Sanctuary Network

- **Regulatory Proposal (cont'd):**
 - Clarified access issues (cont'd)
 - ✓ Aquaculture leasing
 - Existing leases will be allowed
 - Current law prohibits DNR from issuing new aquaculture leases in sanctuaries
 - Aquaculture leasing in sanctuaries can be compatible to restoration by adding:
 - Localized water quality improvements;
 - Providing ecosystem functions through habitat creation; and
 - If reproductive oysters are used, could enhance natural recruitment within sanctuary.
 - Modifies OMP to include a strategy to support leasing within a sanctuary under specified conditions
 - Legislative change needed



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Public Shellfish Fishery Areas (PSFAs)

- **Purpose:**

- Set aside areas for the commercial oyster fishery by designating Public Shellfish Fishery Areas based upon specific criteria included in 2009 Lease Law





Public Shellfish Fishery Areas (PSFAs)

•Regulatory Proposal:

- Leasing for shellfish aquaculture is prohibited in PSFAs
- Made modification to retain 16 oyster bars (>1,000 acres) as PSFAs rather than making them available for leasing
- Establishes process for a leaseholder to petition the DNR to declassify a PSFA, and specific criteria for DNR to make a declassification determination
 - Average oyster density is equal to or below one oyster that is one inch or greater per square meter
- Clarifies that recreational fishing is allowed in a PSFA



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Leasing and Aquaculture

- **Purpose:**

- Implement regulations in order to create a shellfish aquaculture and leasing system under the requirements of the 2009 Lease Law

- **Regulatory Proposal:**

- Makes tens of thousands of acres of bottom, previously off-limits, available for leasing, including tens of thousands of acres of no longer productive natural oyster bars



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MD's Proposed Oyster Restoration and Aquaculture Development Plan

Leasing and Aquaculture (cont'd)

- **Regulatory Proposal (cont'd):**
 - Establishes lease application and rental fees
 - Submerged land lease
 - Application fees
 - Outside an AEZ is \$300
 - Inside an AEZ is \$150
 - Annual rental fee is \$3.50 / acre regardless if the lease is in or outside an AEZ
 - Water column lease
 - Outside an AEZ is \$80 / acre (MDE)
 - Inside an AEZ is \$40 / acre
 - Demonstration lease - no application or annual rental fees

AEZ = Aquaculture Enterprise Zone



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MD's Proposed Oyster Restoration and Aquaculture Development Plan

Leasing and Aquaculture (cont'd)

- **Regulatory Proposal (cont'd):**
 - Requires lease holders, except those with demonstration leases, to obtain a Shellfish Aquaculture Harvester Permit
 - Establishes application process for this permit and requires the listing of individuals performing aquaculture activities on a leased or licensed area
 - Requires those performing aquaculture activities on a lease to obtain a registration card



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MD's Proposed Oyster Restoration and Aquaculture Development Plan

Leasing and Aquaculture (cont'd)

- **Regulatory Proposal (cont'd):**
 - Requires written permission to possess undersized oysters outside of a lease
 - Requires oysters harvested for human consumption to be at least 3 inches and sold to an oyster buy station
 - Current law requires 3" size limit
 - DNR / MDA committed to evaluating strategies to allow harvest of oysters <3 inches
 - Requires lease permit and registration card holders to comply with the NSSP requirements
 - Establishes requirements for marking a lease and gear placed on a lease, including liability for that gear



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MD's Proposed Oyster Restoration and Aquaculture Development Plan

Leasing and Aquaculture (cont'd)

- **Regulatory Proposal (cont'd):**
 - Requires DNR authorization before making any alteration which includes adding any type of fill or sediment other than shell to the lease
 - Shell present in the leased area at the time the lease is issued may not be removed without the written permission by DNR
 - Establishes annual lease activity reporting requirements



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Leasing and Aquaculture (cont'd)

- **Regulatory Proposal (cont'd):**
 - Establishes annual lease activity reporting requirements
 - Allows for the transfer and surrender of a lease
 - Establishes 2 pre-approved leasing areas in the Coastal Bays
 - Limited to on-bottom leasing
 - Proposed South Point area was reduced 50% from original proposal
 - Prohibits a lease from being located in the Assateague Island National Seashore.
 - Creates penalties for certain shellfish violations by a leaseholder or SAHRC holders



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Leasing and Aquaculture (cont'd)

- **Regulatory Proposal (cont'd):**
 - Agreement to establish an interested parties list or other appropriate mechanism by DNR (for bottom leasing) and MDE (for off-bottom leasing) for individuals who want to be notified of aquaculture permit applications.
 - Clarifies access issues
 - Normal recreational and commercial fishing activities are allowed on a lease as long as the activity does not destroy or damage shellfish or gear which may be placed there
 - MDE companion regulation being proposed to 1) prohibit off-bottom aquaculture in designated natural oyster bars in the mainstem of Chesapeake Bay, and 2) all leases in a PSFA



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Power Dredge Study Areas

- **Purpose:**

- Determine if power dredging is beneficial, detrimental, or has no impact to oyster populations.
- 5+ year study

- **Regulatory Proposal:**

- Creates 3 new power dredge areas
 - ✓ Kent County (low salinity)
 - ✓ Talbot County (moderate salinity)
 - ✓ Dorchester County (high salinity)



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Other Items in Regulatory Proposal

➤ **Enforcement**

- Modifies OMP strategy to require appropriate enforcement measures pertaining to the allowance of certain aquaculture activities and clamming in designated sanctuaries.

➤ **Shellfish Sanitation**

- Creates new OMP strategy and action for MD compliance with National Shellfish Sanitation Program (NSSP).

➤ **Regional Oyster Industry Advisory Committees**

- DNR commitment to enhance and/or establish the process to obtain advisory information pertaining to the management of MD's public oyster fishery from the oyster industry.

➤ **Five Year Review**

- DNR commitment to review the effectiveness of the locations of sanctuaries, public shellfish fishery areas, and aquaculture areas every 5 years and to propose changes where needed.



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Timeline

May 21 - Governor Announcement

*Maps and Regulatory Summary
Posted Online for Public Review*

May 27 – Regulations Submitted to AELR

July 2 – Regulations Published in Maryland Register

July 2 – Aug. 16: Public Comment

Four Public Hearings

7/7 Annapolis

7/13 Leonardtown

7/22 Salisbury

8/5 Wye Mills

Sept. 6 – Scheduled Effective Date of Proposed Regulations



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Summary

- ✓ **Broad stakeholder agreement that status quo is not acceptable.**
- ✓ **DNR is responsible for ensuring the long-term sustainability of Maryland's oyster resource and fishery.**
- ✓ **This is a complex problem that has not been addressed for over 100 years.**
- ✓ **There are no easy solutions, and there will be short-term impacts.**
- ✓ **Failure to act would be irresponsible, and would result in more significant and longer-lasting impacts.**



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Summary

- ✓ **Proposed plan is based upon scientific findings of the most comprehensive oyster study (EIS) ever performed in the Bay, if not the world, and input from an extensive public participation process.**
- ✓ **Do we not owe it to our kids and future generations the opportunity to enjoy the Chesapeake Bay and the benefits of oysters that we have enjoyed for the past hundreds of years?**
- ✓ **In the decades ahead, our kids and grandkids will look back and say one of two things:**
 - 1) I'm glad our parents and grandparents did all they could to restore the oyster; or**
 - 2) I wish our parents and grandparents would have done what was necessary so that we could have enjoyed what we can only read about oysters today**



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**Presentation of Proposed Regulations to
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July □ August 2010**